Supreme Court, U.S.
FILED
JAN 10 1996
CLERK

No. 95-902

In The

Supreme Court of the United States

October Term, 1995

SOMERSET COUNTY, MARYLAND,

Petitioner,

vs.

GEORGE JOSEPH ARAVANIS,

Respondent.

On Petition for a Writ of Certiorari to the Court of Appeals of Maryland

RESPONDENT'S BRIEF IN OPPOSITION

ANNE D. SMITH
Counsel of Record
ANDREW M. DANSICKER
WHITE & CASE
1155 Avenue of the Americas
New York, New York 10036
(212) 819-8479

DEBORAH A. JEON
ACLU Foundation of Maryland
100 North Liberty Street
Centreville, Maryland 21617
(410) 758-1975

Attorneys for Respondent

8064
Lutz Appellate Services, inc.
(800) 3 APPEAL • (800) 5 APPEAL • (800) BRIEF 21

QUESTIONS PRESENTED

1. Whether the Court of Appeals of Maryland's ruling solely under the excessive fines provision of Article 25 of Maryland's Declaration of Rights is based on independent and adequate state grounds?

2. Did the Court of Appeals adopt the proper test to determine whether the civil forfeiture of respondent's real property violates the excessive fines provision of Article 25 of Maryland's Declaration of Rights?

TABLE OF CONTENTS

Page

Questions Presented i

Table of Contents ii

Table of Citations ii

Statement of the Case 1

Reasons for Denying the Writ 3

I. The Petition should be denied because the Court of Appeals of Maryland based its decision on independent and adequate state grounds. 3

II. This Court should not decide an issue that was purposely avoided by the Court of Appeals of Maryland — whether the Excessive Fines Clause of the Eighth Amendment applies to the States. 6

Conclusion 8

TABLE OF CITATIONS

Cases Cited:

Ake v. Oklahoma, 470 U.S. 68 (1984) 7

Aravanis v. Somerset County, 339 Md. 644, 664 A.2d 888 (1995) 1, 4, 5, 6, 7

Austin v. United States, 113 S. Ct. 2801 (1993) 6

Contents

	Page
Black v. Cutter Laboratories, 351 U.S. 292 (1956)	7
Herb v. Pitcairn, 324 U.S. 117 (1945)	7
Lyng v. Northwest Indian Cemetery Prot. Ass'n, 485 U.S. 439 (1988)	7
Michigan v. Long, 463 U.S. 1032 (1983)	3, 4, 5
Minnesota v. National Tea Co., 309 U.S. 551 (1940) ..	3
Three Affiliated Tribes v. Wold Engineering, 467 U.S. 138 (1984)	7
Wainwright v. Goode, 464 U.S. 78 (1983)	3
Statute Cited:	
Md. Ann. Code art. 27 § 297 (Michie 1992)	1
United States Constitution Cited:	
Eighth Amendment	4, 5, 6, 7
Other Authority Cited:	
Article 25 of Maryland's Declaration of Rights ..	i, 2, 3, 4, 5, 6

Respondent George Joseph Aravanis respectfully requests that this Court deny the petition for writ of certiorari, which seeks review of the opinion of the Court of Appeals of Maryland, issued on September 13, 1995. The decision is reported as *Aravanis v. Somerset County*, 339 Md. 644, 664 A.2d 888 (1995), and is reprinted in the Appendix to the Petition for a Writ of Certiorari at Appendix A.

STATEMENT OF THE CASE

On January 24, 1992, the Somerset County Narcotics Task Force ("Somerset County"), acting through the State's Attorney for Somerset County ("State"), brought a civil forfeiture action against respondent George Joseph Aravanis seeking the forfeiture of Aravanis' home and farm pursuant to Maryland's drug forfeiture statute, Md. Ann. Code art. 27 § 297 (Michie 1992). (App. 30a). The forfeiture action was commenced one day after Aravanis had been convicted, on January 23, 1992, of a charge of possession of a controlled dangerous substance (marijuana) in sufficient quantity to indicate an intent to distribute. (App. 31a).

A civil trial was held before Judge Daniel Long of the Circuit Court for Somerset County, Maryland on January 4, 1993, with Aravanis representing himself. Aravanis' house and farm were forfeited to the Somerset County Narcotics Task Force, the same entity that had initiated the criminal investigation of Aravanis, by an Order of the Court dated August 24, 1993. (App. 39a). In that Order, Judge Long stated that "[t]here is no question that forfeiture of real property is a harsh measure. In this case, the harshness is compounded by the fact that Aravanis has owned all or some part of this real property since New Year's Eve of 1971 and has occupied the property for a measure of that time as his residence." (App. 37a). The court concluded that "[e]ven if this Court were to concur with Aravanis' argument as to the harshness of the measure, it has no discretion to allow anything other than forfeiture." (App. 38a).

As the trial court pointed out, Aravanis and his wife, Margaret, had acquired joint title in the property nearly twenty years before his arrest and had occupied the house and property as a residence and farm while raising nine children. (App. 2a, 31a). In 1988 Aravanis and his wife were divorced, and on April 17, 1991, Aravanis obtained sole possession of the real property pursuant to a divorce settlement agreement. (App. 31a).

Shortly after April 17, 1991, Aravanis used a portion of the divorce proceeds to purchase marijuana for resale and began selling small amounts of marijuana. (App. 34a n.3). Aravanis had never distributed drugs prior to April 17, 1991, and no evidence of any prior arrests or convictions was presented at the forfeiture trial. (App. 34a). Somerset County erroneously states that Aravanis had been selling drugs out of his home for many years prior to the divorce, and that Aravanis sold other drugs besides marijuana. (Petition at 2 n. 1, 3). Those same unsupported allegations were presented to the trial court, but the trial court made no specific findings concerning the allegations and simply noted that the evidence showed that "two controlled purchases of marijuana were made by the State from Aravanis' property within a short period of time prior to execution of the search warrant." (App. 34a).

Aravanis, now represented by counsel, appealed the forfeiture decision of the Circuit Court of Somerset County to the Court of Special Appeals of Maryland, but the Court of Appeals of Maryland granted certiorari on its own motion before the intermediate appellate court could hear the case. (App. 8a). On September 13, 1995, the Court of Appeals of Maryland issued an Opinion reversing the decision of the trial court and holding that the trial court had failed to consider whether the forfeiture of Aravanis' real property was "excessive" under the excessive fines provision of Article 25 of the Maryland Declaration of Rights. (App. 2a).

The Court of Appeals also set forth a test for trial courts in

Maryland to use in determining whether a forfeiture of real property under the state civil forfeiture statute is "excessive" and therefore violative of Article 25. (App. 2a, 27a-28a). The court unanimously held that Maryland's excessive fines provision "requires more" than a simple examination of the relationship between the property and the underlying criminal offense. (App. 26a). Rather, the trial court must "compare the gravity of the offense or offenses involving the property and the extent of involvement of the owner with the enormity of the loss to the owner occasioned by the forfeiture." (App. 26a-27a). The court remanded the case to the trial court for a new trial in light of the fact that no evidence had been presented at trial "concerning the value of either the subject property or of the marijuana seized or as to any other factor bearing on the fairness of the forfeiture." (App. 8a).

REASONS FOR DENYING THE WRIT

I.

THE PETITION SHOULD BE DENIED BECAUSE THE COURT OF APPEALS OF MARYLAND BASED ITS DECISION ON INDEPENDENT AND ADEQUATE STATE GROUNDS.

This Court has stated that it will not review a state court decision which indicates that it is based on independent and adequate state grounds, *Michigan v. Long*, 463 U.S. 1032 (1983), because "the views of the State's highest court with respect to state law are binding on the federal courts." *Wainwright v. Goode*, 464 U.S. 78, 84 (1983). This Court has further pointed out that it is especially important that state courts, such as the Court of Appeals of Maryland, should be left free and unfettered in interpreting their state constitutions. *Michigan*, 463 U.S. at 1041 (*quoting Minnesota v. National Tea Co.*, 309 U.S. 551 (1940)). To preserve our federalist system of government, state courts should be afforded the

last word in legal interpretation until it is absolutely necessary for this Court to intervene in the decision-making process. *Id.* at 1067 (Stevens, J. dissenting).

It is plain that the Court of Appeals of Maryland's decision in *Aravanis v. Somerset County,* 664 A.2d 888 (Md. 1995), rests on independent and adequate state grounds, because the Court of Appeals expressly stated that it would decide *Aravanis* under Article 25, not under the Eighth Amendment. (App. 14a). In *Aravanis,* the Court of Appeals held, solely as a matter of state law, that trial courts must apply a multi-factor "proportionality" test to determine whether a forfeiture under Maryland's civil forfeiture statute is an excessive fine under Article 25 of the Maryland Declaration of Rights. The Court of Appeals explained that it need not (and therefore would not) decide *Aravanis* under the Eighth Amendment's Excessive Fines Clause, because this Court has never determined whether the Excessive Fines Clause of the Eighth Amendment applies to the several states. (App. 14a).

This is not a case, such as *Michigan v. Long,* where the state court based its ruling on both the state constitution *and* the federal constitution. *Michigan,* 463 U.S. at 1037 n. 3. In that case, the state court only mentioned the state constitution twice in the entire opinion — once in a footnote and once again in the concluding sentence of the opinion, where the court stated: "We [the Michigan Supreme Court] hold, therefore, that the deputies' search of the vehicle was proscribed by the Fourth Amendment to the United States Constitution and art. 1, § 11 of the Michigan Constitution." *Id.* Because the independence of any possible state law ground was not clear from the state court's opinion, this Court found "jurisdiction in the absence of a plain statement that the decision below rested on an adequate and independent state ground." *Id.* at 1044.

In this instance, however, the Court of Appeals provided a

"plain statement" indicating that it was basing its decision solely on the excessive fines provision of Article 25 of the state constitution. (App. 14a). In other words, the Court of Appeals made clear "in its judgment or opinion that the federal cases are being used only for purposes of guidance, and do not themselves compel the result that the court has reached." *Id.* at 1041. The Court of Appeals' interpretation of Article 25's excessive fines provision and development of an excessive fines test by reference to federal precedents do not undermine the conclusion that the *Aravanis* decision rests on independent and adequate state grounds, for two reasons.

First, prior to *Aravanis*, there were few Maryland state court opinions analyzing and/or interpreting Article 25's excessive fines provision. Therefore, it is not surprising to find that the Court of Appeals used federal case law to analyze the excessive fines provision of the state constitution, especially in light of the fact that Article 25, like many constitutional provisions in many state constitutions, is textually identical to its counterpart in the federal constitution. (App. 15a-16a). In such instances, state courts resolving state constitutional issues will often be guided by analogous federal precedents, especially where the state court has not previously analyzed the particular constitutional provision. For purposes of review by this Court, however, the critical issue is whether the state court viewed the federal case law as dispositive of the state consitutional issue. Here, the Court of Appeals clearly did not and, indeed, could not without reaching the very question that it explicitly avoided: whether the Excessive Fines Provision of the Eighth Amendment is binding on the States. *See* Point II, *supra.*

Second, although Somerset County is correct that the Court of Appeals' discussion of the excessive fines provision in *Aravanis* relied heavily on analysis and interpretations of federal case law, it is important to note that the Court of Appeals, unlike the state court in *Michigan v. Long,* did not rely solely on federal case law in

fashioning an excessive fines test under Article 25, but rather also examined decisions from other states which interpreted different state civil forfeiture provisions under different state constitutions. (App. 18a). For instance, the Court of Appeals examined how the Pennsylvania Supreme Court, the Appellate Court of Illinois, the Supreme Court of Idaho and the Court of Appeals of Texas interpreted their own state constitutions in light of this Court's statements in *Austin v. United States*, 113 S. Ct. 2801 (1993). (App. 18a-21a).

In light of the lack of prior state law decisions concerning the excessive fines provision of Article 25, the Court of Appeals' references to other state court decisions, and the Court of Appeals' express decision not to decide *Aravanis* under the Eighth Amendment, it is clear that *Aravanis* was decided on independent and adequate state grounds that preclude appellate review by this Court.

II.

THIS COURT SHOULD NOT DECIDE AN ISSUE THAT WAS PURPOSELY AVOIDED BY THE COURT OF APPEALS OF MARYLAND — WHETHER THE EXCESSIVE FINES CLAUSE OF THE EIGHTH AMENDMENT APPLIES TO THE STATES.

The crux of Somerset County's argument is that the Court of Appeals misinterpreted the Excessive Fines Clause of the Eighth Amendment by formulating an excessive fines test that is contrary to the test adopted by several federal circuit courts, including the Fourth Circuit. Somerset County refuses to recognize, however, that the Court of Appeals expressly chose to avoid the Eighth Amendment and based its ruling on Article 25 because the issue of whether the Excessive Fines Clause of the Eighth Amendment applies to the States has never been decided by this Court. (App. 14a n. 10).

If the Court of Appeals of Maryland had chosen to base its decision on the Eighth Amendment, it would have been required to decide the issue of whether the Excessive Fines Clause applies to the States. The Court of Appeals' failure to adjudicate the incorporation issue is compelling evidence that the decision by the Court of Appeals was not premised in any manner on the Eighth Amendment and is also a strong reason why this Court should not review the *Aravanis* case. If this Court were to grant certiorari and address the question presented by Somerset County, then it would be required to determine whether the Excessive Fines Clause of the Eighth Amendment applies to the States. Otherwise, this Court would be acting in the role of advisor to the Court of Appeals of Maryland — a role it has repeatedly stated is not permitted. *Ake v. Oklahoma*, 470 U.S. 68, 75 (1984) (*citing Herb v. Pitcairn*, 324 U.S. 117, 126 (1945)).

Aravanis believes that the Excessive Fines Clause of the Eighth Amendment applies to the several states, but there is no reason for this Court to address that issue because it was purposely avoided by the Court of Appeals in *Aravanis*. "A fundamental and longstanding principle of judicial restraint requires that courts avoid reaching constitutional questions in advance of the necessity of deciding them." *Lyng v. Northwest Indian Cemetery Prot. Ass'n.*, 485 U.S. 439, 445 (1988). In the past the Court has "relied on that principle to resolve doubts about the independence of state-law decisions in favor of an interpretation that avoids a constitutional question." *Three Affiliated Tribes v. Wold Engineering*, 467 U.S. 138, 158 (1984). *See also Black v. Cutter Laboratories*, 351 U.S. 292, 299-300 (1956) ("[E]ven if the State Court's opinion be considered ambiguous, we should choose the interpretation which does not face us with a constitutional question.").

CONCLUSION

For the foregoing reasons, Respondent George Joseph Aravanis respectfully requests that this Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

ANNE D. SMITH
Counsel of Record
ANDREW M. DANSICKER
WHITE & CASE
1155 Avenue of the Americas
New York, New York 10036
(212) 819-8479

DEBORAH A. JEON
ACLU Foundation of Maryland
100 North Liberty Street
Centreville, Maryland 21617
(410) 758-1975

Attorneys for Respondents